

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
RECEIVED

MAR 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Coleman, Sebewaing and
Tuscola, Michigan)

MM Docket No. 95-7
RM-8561

DOCKET FILE COPY ORIGINAL

COMMENTS AND COUNTERPROPOSAL
OF THUMB BROADCASTING, INC.

On January 23, 1995, the Commission released a Notice of Proposed Rulemaking and Order to Show Cause,¹ proposing to modify the FM Table of Allotments, 47 C.F.R. § 73.202(b), to substitute Channel 268A for Channel 269A at Tuscola, Michigan; modify the license for Station WBBN (Tuscola) to specify operation on Channel 268A; substitute Channel 269A for Channel 268A, Coleman, Michigan; modify the license for Station WPRJ (Coleman) accordingly; and, absent an expression of interest in its retention, delete vacant Channel 267A at Sebewaing, Michigan. Alternatively, if an expression of interest is submitted with respect to the Sebewaing allotment, the Commission proposes to substitute Channel 281A (with a 10.1 km site restriction) for Channel 267A.

Thumb Broadcasting, Inc. ("Thumb"), applicant for a new FM station on Channel 279C2 at Harbor Beach, Michigan, by its attorneys and pursuant to Sections 1.415 and 1.420(d) of the

¹ RM-8561, MM Docket No. 95-7 (released January 23, 1995) ("NPRM").

No. of Copies rec'd
List A B C D E

024

Commission's Rules, hereby submits its comments and counterproposal to the proposed allotments.² As shown below, the proposed contingent substitution of Channel 281A for Channel 267A at Sebewaing would significantly restrict the potential use of Channel 279C2 at Harbor Beach, and would in fact be mutually exclusive with the facilities proposed in Thumb's pending application. Another channel -- Channel 231A -- is available, however, for use at Sebewaing without preclusive effect on the Harbor Beach allotment, and with no need for a site restriction on the Sebewaing allotment. Accordingly, if the Sebewaing allotment is not deleted, the Commission should substitute Channel 231A for Channel 267A at Sebewaing, in lieu of Channel 281A as proposed. By doing so, the Commission could accomplish the desired substitutions at Tuscola and Coleman, preserve a channel at Sebewaing, and permit the early introduction by Thumb of a new FM service at Harbor Beach.

I. The Faircom Proposal

In requesting the proposed alteration of the FM Table of Allotments, Petitioner Faircom Flint, Inc. ("Faircom"), seeks to modify the allocations at Coleman and Tuscola, Michigan, to enable WPRJ and WBBN to upgrade their services to six kilowatts. WPRJ and WBBN currently are restricted to

² On February 28, 1995, Thumb tendered an application proposing the new station at Harbor Beach pursuant to the Commission's "first come, first served" processing policy.

operating with three kilowatts. In addition, Faircom alleges that the proposed changes would reduce the interference WBBN currently receives in its normal service area from WILS-FM, Flint, and WDET, Detroit.³ To accommodate the desired changes to the FM channels assigned to Coleman and Tuscola, Faircom asks the Commission to delete the allocation of Channel 267A at Sebawaing or, in the event an expression of interest is filed for the Sebawaing allocation, to substitute Channel 281A for Channel 267A.

II. Thumb's Application and Counterproposal

On February 28, 1995, Thumb filed an application under the "first come, first served" provisions of Section 73.3573(g)(3), proposing a new FM station on Channel 279C2 at Harbor Beach, Michigan. This facility would be Harbor Beach's first local FM service. Thumb has already made arrangements for a parcel of land near Harbor Beach for use as the proposed station's transmitter site.

If a statement of interest is submitted for the Sebawaing allocation and Channel 281A is substituted for Channel 267A as proposed, Thumb's Harbor Beach proposal would be severely affected. Specifically, the area in which Thumb could locate its transmitter for Harbor Beach would be significantly restricted and would exclude the site proposed

³ NPRM at ¶ 2.

in Thumb's application.⁴ Therefore, in order that Thumb might construct its proposed new facility at Harbor Beach, and the Sebewaing area might be provided with additional FM service in the future, Thumb counterproposes that, in the event an expression of interest in the Sebewaing allotment is filed, Channel 231A be allotted to Sebewaing, instead of Channel 281A.

As shown in the attached Engineering Statement,⁵ Channel 231A can be allotted to Sebewaing with no site restriction as a specially negotiated short spaced unlimited allotment.⁶ Channel 281A, by contrast, would require a site restriction of 10.1 km to the southwest of Sebewaing. Thus, Thumb counterproposes that, if an expression of interest in Sebewaing is filed, the Commission amend the FM Table of Allotments as follows:

<u>City</u>	<u>Channel No.</u>	<u>Proposed</u>
Coleman, Michigan	268A	269A
Sebewaing, Michigan	267A	231A
Tuscola, Michigan	269A	268A

⁴ See Carl E. Smith Consulting Engineers, Engineering Statement In Support of Comments in MM Docket No. 95-7: Thumb Broadcasting, Inc., Harbor Beach, MI (February 23, 1995) (attached as Exhibit 1).

⁵ Id.

⁶ As described in the attached Engineering Statement, according to the Working Arrangement for Allotment and Assignment of FM Broadcasting Channels 201 through 300 Under the Canadian-U.S.A. FM Broadcasting Agreement of 1947, (September 7, 1984), if there is an insufficient distance between proposed Canadian and U.S. broadcast facilities, one of the facilities can be "short spaced," provided that the stations do not interfere with each other.

III. Thumb's Counterproposal Advances The Public Interest

Adoption of Thumb's counterproposal would advance the public interest by providing Harbor Beach with a new FM service at an early date while still preserving an allocation for Sebewaing. In addition, this counterproposal advances the FCC's policy of favoring the use of a channel requiring the least site restriction where multiple channels are available for allotment to a community. The allotment of Channel 231A rather than 281A to Sebewaing will eliminate unnecessary limitations on the site selection area for Channel 279A in Harbor Beach and avoid the necessity for a site restriction on the new Sebewaing channel. Finally, Thumb's counterproposal will permit Thumb to construct the facility proposed in its application and promptly introduce the first local FM service to Harbor Beach. In sum, Thumb's counterproposal produces "all winners and no losers," while the original proposal of Faircom would unnecessarily impose limitations on service to Harbor Beach as well as Sebewaing.⁷

⁷ In the event no expression of interest in the Sebewaing allotment is submitted, the vacant allotment may be deleted and this counterproposal disregarded.

IV. Conclusion

For the reasons set forth above, in the event an expression of interest is filed for Sebewaing, Michigan, the Commission should allocate Channel 231A to that community in lieu of Channel 281A.

Respectfully submitted,
THUMB BROADCASTING, INC.

By: 

James R. Bayes
Todd M. Stansbury
Stephen J. Rosen
of

WILEY, REIN & FIELDING
1776 K Street, NW
Washington, DC 20006

Its Attorneys

March 14, 1995

ENGINEERING STATEMENT IN
SUPPORT OF COMMENTS

MM DOCKET 95-7

Thumb Broadcasting, Inc.
Harbor Beach, MI

February 23, 1995

Prepared for: Mr. Richard A. Aymen
Thumb Broadcasting, Inc.
935 S. Van Dyke Road
Bad Axe, MI 48413

CARL E. SMITH CONSULTING ENGINEERS

CONTENTS

Title Page

Contents

Engineering Affidavit

Engineering Statement

Table 1.0 - FM Allocation Study - Channel 231A (94.1 MHz) -
Sebewaing, MI

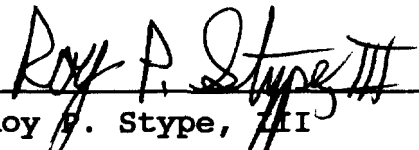
Fig. 1.0 - Detailed Allocation Study

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Thumb Broadcasting, Inc., to prepare the attached "Engineering Statement In Support of Comments - MM Docket 95-7."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me this 23rd day of February, 1995.



Notary Public

/SEAL/

SHERI LYNN KURTZ, Notary Public
For the State of Ohio
My Commission Expires June 14, 1996
Recorded in Summit County

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Thumb Broadcasting, Inc., applicant for a construction permit for a new FM station on Channel 279C2 in Harbor Beach, Michigan, in support of comments in MM Docket 95-7. This rulemaking proceeding proposes to delete vacant Channel 267A from Sebewaing, Michigan, without replacement, in order to accommodate channel substitutions in Tuscola, Michigan and Coleman, Michigan. Alternatively, if comments are filed in this proceeding stating an intention to file an application for the Sebewaing allotment, it is proposed to substitute Channel 281A for Channel 267A in Sebewaing to accommodate this interest. The allotment of Channel 281A to Sebewaing would conflict with the transmitter site proposed in the above referenced application for Channel 279C2 in Harbor Beach. As outlined below, however, this conflict can be eliminated by allotting Channel 231A to Sebewaing, rather than Channel 281A, should comments be filed expressing an interest in the Sebewaing allotment.

The geographic reference coordinates for Sebewaing are:

NL - 43° 44' 00"

WL - 83° 26' 48"

Table 1.0 is an FM allocation study for Channel 231A from these reference coordinates. As shown in this table, operation on Channel 231A from these reference coordinates would be short spaced to CKLW-FM - Windsor, Ontario, which operates on Channel 230C1. The short spacing is permitted, however, pursuant to Paragraph 3.5.1 of the Working Arrangement for Allotment and Assignment of FM Broadcasting Channels 201 through 300 Under the

Canadian - U.S.A. FM Broadcasting Agreement of 1947, dated September 7, 1984, which provides for specially negotiated short spaced unlimited allotments in cases where the required spacing is not met between U.S. and Canadian facilities, provided that the required protection is provided. The applicable protection standards are outlined in Paragraph 5.1.2 of this arrangement. In this particular case, the required protection will be provided to CKLW-FM so long as the proposed 48 dBu contour does not overlap the CKLW-FM 54 dBu contour on Canadian soil. Likewise, there can be no overlap on U.S. soil between the proposed 54 dBu contour and the CKLW-FM 48 dBu contour. In evaluating compliance with this arrangement, CKLW-FM was assumed to operate with maximum Class C1 facilities of 100 kilowatts effective radiated power at 300 meters above average terrain and the proposed Sebewaing allotment was assumed to operate with maximum domestic Class A facilities of 6 kilowatts effective radiated power at 100 meters above average terrain from the reference coordinates outlined above. Figure 1.0 is a map exhibit showing this situation in detail. As shown in this figure, no overlap will occur between the proposed 48 dBu contour and the CKLW-FM 54 dBu contour. Thus, no interference will be caused to CKLW-FM. Furthermore, there will be no overlap between the proposed 54 dBu contour and the CKLW-FM 48 dBu contour. Thus, no interference will be received by this proposed allotment from CKLW-FM. Accordingly, based upon the above information, operation on Channel 231A in Sebewaing as an unlimited allotment will provide the required protection to CKLW-FM.

As shown by the above information, Channel 231A can be allotted to Sebewaing as a specially negotiated short spaced unlimited allotment with no site restriction. Channel 281A, on the other hand, requires a site restriction 10.1 kilometers to the southwest of Sebewaing. FCC policy favors the use of a channel requiring the least site restriction where multiple channels are available for allotment to a community. Thus, Channel 231A is also a better channel than Channel 281A in terms of this policy objective, since it requires no site restriction.

In summary, if comments are filed in this proceeding stating an intention to file an application for the Sebewaing allotment, Channel 231A can be allotted to Sebewaing, with no site restriction, as a specially negotiated short spaced unlimited allotment. This will eliminate the conflict between the original proposal to allot Channel 281A to Sebewaing to satisfy any such interest and the transmitter site specified in the above referenced application for a construction permit for a new FM station on Channel 279C2 in Harbor Beach, Michigan. If no comments are filed expressing an interest in the Sebewaing allotment, it can be deleted without replacement, which also eliminates this potential conflict.

TABLE 1.0

FM ALLOCATION STUDY - CHANNEL 231A (94.1 MHz) - SEBEWAING, MI

 THUMB BROADCASTING, INC.
 HARBOR BEACH, MI

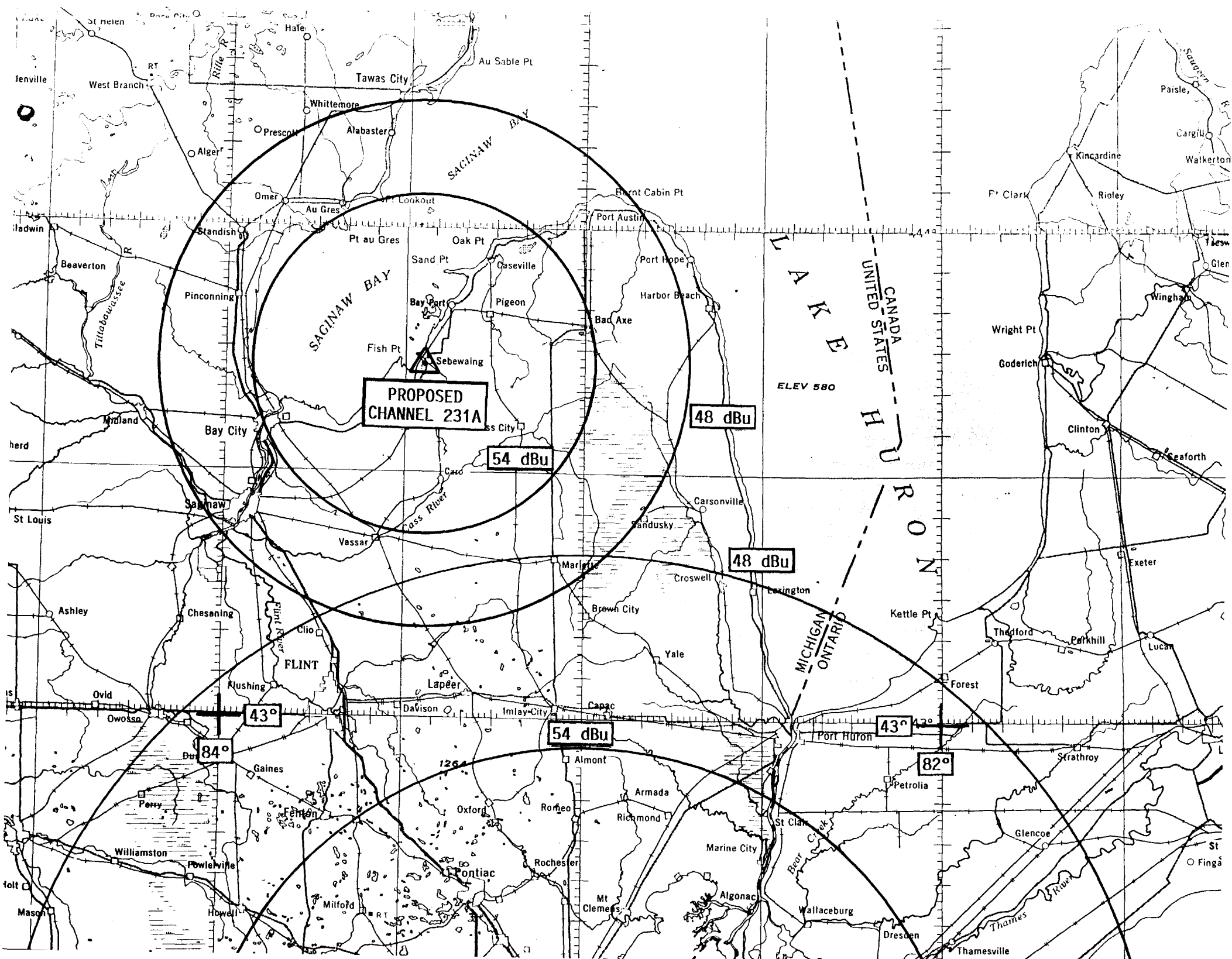
STUDY COORDINATES: 43/44/00 83/26/48

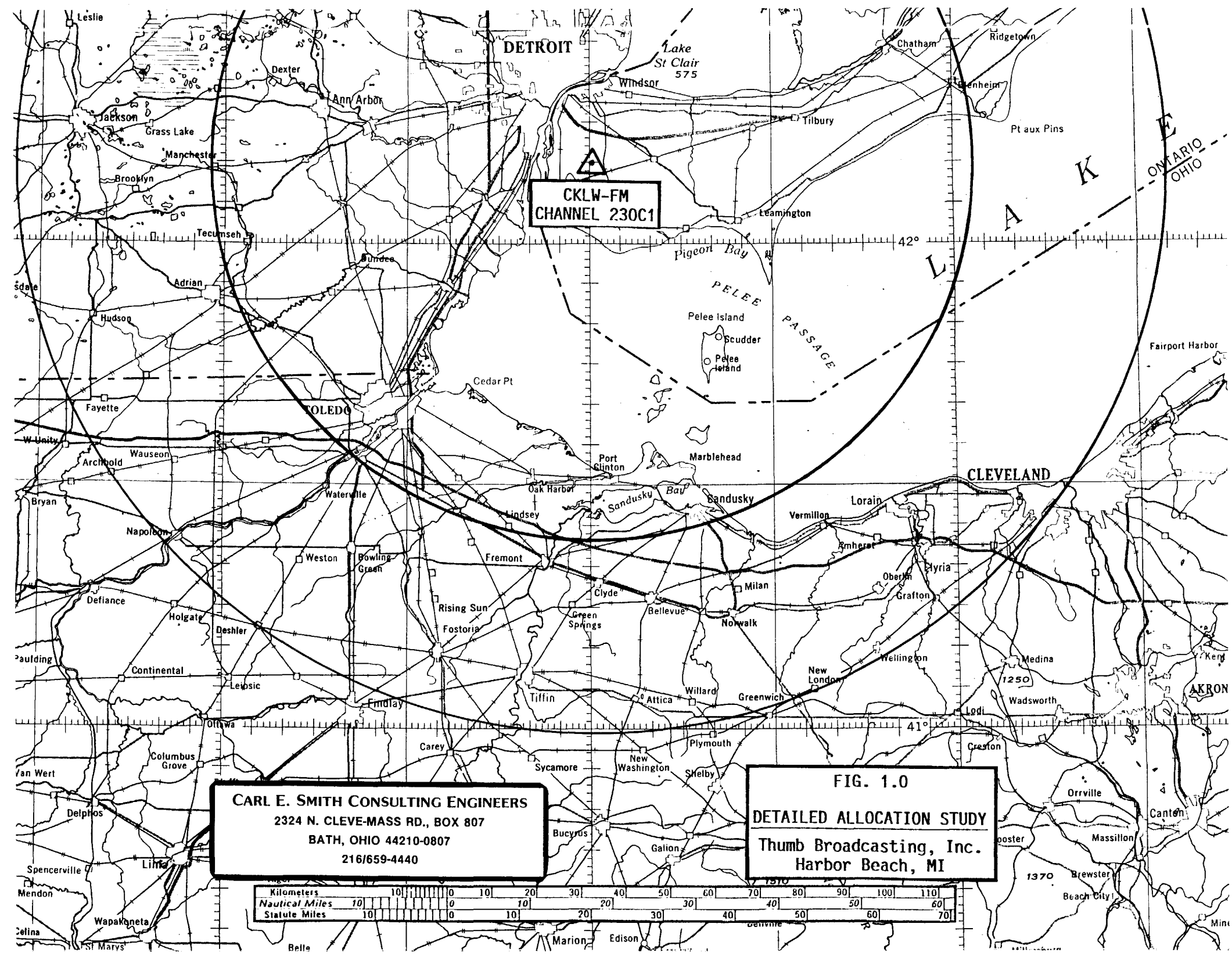
STATION -----	LOCATION	CHANNEL -----	CLASS -----	SPACING (km) -----	REQUIRED SPACING* (km) -----	NOTES -----
WHMIFM	Hovell, MI	228	A	125.48	31.0	
WHMIFM	Hovell, MI	228	A	125.48	31.0	7
CBCLFM	London, ON	228	C1	190.27	92.0	
ALLOTMENT	Oven Sound, ON	229	B	221.33	84.0	11
WCLX	Mio, MI	230	C2	132.41	106.0	2
CKLWFM	Windsor, ON	230	C1	177.47	181.0	10
WIBM	Jackson, MI	231	B	179.09	178.0	
WSAB	Pentwater, MI	231	C3	230.67	142.0	2
ALLOTMENT	Manitoulin Island, ON	231	C	260.70	259.0	11
CBLFM	Toronto, ON	231	C1	327.37	256.0	
ALLOTMENT	Chatham, ON	232	B	180.32	149.0	11
WCENFM	Mount Pleasant, MI	233	C1	93.29	75.0	
WCSX	Birmingham, MI	234	B	144.02	69.0	
WKJC	Tawas City, MI	284	C2	76.69	15.0	
WFYCFM	Alma, MI	285	A	102.01	10.0	

* Required Spacing Per Section 73.207 of The FCC Rules

Notes:

- | | |
|--------------------------------------|-------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application |
| 2 - Construction Permit | 8 - Proposed Rulemaking |
| 3 - Channel Deletion Proposed | 9 - Rulemaking Petition |
| 4 - Move From This Channel Ordered | 10 - Short-Spaced |
| 5 - Move to This Channel Ordered | 11 - Vacant Allotment |
| 6 - One Step Reference Site | |





CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of March, 1995, I caused copies of the foregoing "Comments and Counterproposal of Thumb Broadcasting, Inc." to be mailed via first-class postage prepaid mail to the following:

Come Together Ministries, Inc.
5444 N. Coleman Road
Coleman, Michigan 48618

Richard M. Riehl, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive, Suite 900
Arlington, Virginia 22203-1633



Lisa A. Frenette